

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1182

Introduced by Senator Leno

February 22, 2012

An act to amend Section ~~11362.5~~ 11362.765 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 1182, as amended, Leno. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law also makes it a crime to possess for sale, plant, cultivate, harvest, dry process, transport, import into this state, sell, furnish, administer, or give away, to offer to transport, import into this state, sell, furnish, administer, or give away, or to attempt to import into this state or transport, any marijuana. Existing law makes it a felony or misdemeanor to open or maintain any place for the purpose of unlawfully selling, giving away, or using, or to knowingly rent, lease, or make available for use a building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. Existing law further provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, and every building or place wherein or upon

which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.

Existing law requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996, and the Attorney General has published guidelines regarding collectives and cooperatives organized and operated to cultivate and distribute marijuana for medical purposes.

This bill would exempt from the criminal acts and abatement of nuisance provisions described above collectives, cooperatives, and other business entities that are organized and operated in compliance with the guidelines published by the Attorney General, and the officers, members, and employees of those collectives, cooperatives, and other business entities. The bill would also exempt those entities and persons from criminal prosecution or punishment solely on the basis of the fact that they receive compensation for actual expenses incurred in carrying out activities that are in compliance with those guidelines.

~~Existing law sets forth findings and declarations describing the purposes of the act, including to ensure that seriously ill Californians have the right to obtain and to use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11362.765 of the Health and Safety Code
- 2 is amended to read:
- 3 11362.765. (a) Subject to the requirements of this article, the
- 4 individuals specified in subdivision (b) shall not be subject, on
- 5 that sole basis, to criminal liability under Section 11357, 11358,
- 6 11359, 11360, 11366, 11366.5, or 11570. However, nothing in
- 7 this section shall authorize the individual to smoke or otherwise
- 8 consume marijuana unless otherwise authorized by this article,

1 nor shall anything in this section authorize any individual or group
2 to cultivate or distribute marijuana for profit.

3 (b) Subdivision (a) shall apply to all of the following:

4 (1) A qualified patient or a person with an identification card
5 who transports or processes marijuana for his or her own personal
6 medical use.

7 (2) A designated primary caregiver who transports, processes,
8 administers, delivers, or gives away marijuana for medical
9 purposes, in amounts not exceeding those established in subdivision
10 (a) of Section 11362.77, only to the qualified patient of the primary
11 caregiver, or to the person with an identification card who has
12 designated the individual as a primary caregiver.

13 (3) Any individual who provides assistance to a qualified patient
14 or a person with an identification card, or his or her designated
15 primary caregiver, in administering medical marijuana to the
16 qualified patient or person or acquiring the skills necessary to
17 cultivate or administer marijuana for medical purposes to the
18 qualified patient or person.

19 (4) *Collectives, cooperatives, and other business entities that*
20 *are organized and operated in compliance with paragraphs A and*
21 *B of Section IV of the Guidelines For The Security And*
22 *Non-Diversion Of Marijuana Grown For Medical Use issued by*
23 *the Attorney General in August 2008, pursuant to Section 11362.81,*
24 *and the officers, members, and employees of those collectives,*
25 *cooperatives, and other business entities.*

26 (c) *Collectives, cooperatives, and other business entities that*
27 *are organized and operated in compliance with paragraphs A and*
28 *B of Section IV of the Guidelines For The Security And*
29 *Non-Diversion Of Marijuana Grown for Medical Use issued by*
30 *the Attorney General in August 2008, pursuant to Section 11362.81,*
31 *and the officers, members, and employees of those collectives,*
32 *cooperatives, and other business entities, who receive*
33 *compensation for actual expenses incurred in carrying out*
34 *activities that are in compliance with those guidelines, including*
35 *reasonable compensation incurred for services provided to the*
36 *members or the organization, shall not be subject to prosecution*
37 *or punishment under Section 11359 or 11360 solely on the basis*
38 *of the fact that those entities or persons receive compensation as*
39 *described in this subdivision.*

40 (e)

(d) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

~~SECTION 1. Section 11362.5 of the Health and Safety Code is amended to read:~~

~~11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.~~

~~(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:~~

~~(A) To ensure that seriously ill Californians have the right to obtain and to use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.~~

~~(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.~~

~~(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.~~

~~(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.~~

~~(e) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.~~

~~(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes~~

1 of the patient upon the written or oral recommendation or approval
2 of a physician.
3 (e) ~~For the purposes of this section, “primary caregiver” means~~
4 ~~the individual designated by the person exempted under this section~~
5 ~~who has consistently assumed responsibility for the housing, health,~~
6 ~~or safety of that person.~~

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